

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

GILEAD SCIENCES, INC.,

Plaintiff and Counterdefendant,

v.

MERCK & CO., INC. (Defendant only), MERCK  
SHARP & DOHME CORP., and ISIS  
PHARMACEUTICALS, INC.

Defendants and  
Counterclaimants.

Case No. 5:13-cv-04057-BLF

**VERDICT FORM**

We, the jury, unanimously agree to the answers to the following questions and return them under the instructions of this Court as our verdict in this case.

**I. U.S. PATENT NUMBER 7,105,499 ("THE '499 PATENT")**

**A. Claim 1.**

1. Has Gilead proven by clear and convincing evidence that Claim 1 of the '499 patent is invalid for lack of written description?

\_\_\_\_\_ Yes (Verdict for Gilead)      P   No (Verdict for Merck and Ionis)

2. Has Gilead proven by clear and convincing evidence that Claim 1 of the '499 patent is invalid for lack of enablement?

\_\_\_\_\_ Yes (Verdict for Gilead)      P   No (Verdict for Merck and Ionis)

<p><i><b>If "YES"</b></i>  <i><b>to Questions 1 and/or 2,</b></i>  <i><b>answer Questions 3 and 4</b></i>  <i><b>and go to the next claim.</b></i></p>	<p><i><b>If "NO"</b></i>  <i><b>to both Questions 1 and 2,</b></i>  <i><b>skip Questions 3 and 4</b></i>  <i><b>and go to the next claim.</b></i></p>
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3. Has Gilead proven by clear and convincing evidence that Claim 1 of the '499 Patent is invalid for derivation from Jeremy Clark?

\_\_\_\_\_ Yes (Verdict for Gilead)    \_\_\_\_\_ No (Verdict for Merck and Ionis)

4. Has Gilead proven by clear and convincing evidence that Claim 1 of the '499 Patent is invalid for prior invention by Jeremy Clark?

\_\_\_\_\_ Yes (Verdict for Gilead)    \_\_\_\_\_ No (Verdict for Merck and Ionis)

B. **Claim 2.**

1. Has Gilead proven by clear and convincing evidence that Claim 2 of the '499 patent is invalid for lack of written description?

\_\_\_\_ Yes (Verdict for Gilead)      P   No (Verdict for Merck and Ionis)

2. Has Gilead proven by clear and convincing evidence that Claim 2 of the '499 patent is invalid for lack of enablement?

\_\_\_\_ Yes (Verdict for Gilead)      P   No (Verdict for Merck and Ionis)

<p><b><i>If "YES"</i></b>  <b><i>to Questions 1 and/or 2,</i></b>  <b><i>answer Questions 3 and 4</i></b>  <b><i>and go to the next claim.</i></b></p>	<p><b><i>If "NO"</i></b>  <b><i>to both Questions 1 and 2,</i></b>  <b><i>skip Questions 3 and 4</i></b>  <b><i>and go to the next claim.</i></b></p>
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3. Has Gilead proven by clear and convincing evidence that Claim 2 of the '499 Patent is invalid for derivation from Jeremy Clark?

\_\_\_\_ Yes (Verdict for Gilead)    \_\_\_\_ No (Verdict for Merck and Ionis)

4. Has Gilead proven by clear and convincing evidence that Claim 2 of the '499 Patent is invalid for prior invention by Jeremy Clark?

\_\_\_\_ Yes (Verdict for Gilead)    \_\_\_\_ No (Verdict for Merck and Ionis)

**II. U.S. PATENT NUMBER 8,481,712 ("THE '712 PATENT")****A. Claim 1.**

1. Has Gilead proven by clear and convincing evidence that Claim 1 of the '712 patent is invalid for lack of written description?

\_\_\_\_\_ Yes (Verdict for Gilead)    ☒ No (Verdict for Merck and Ionis)

2. Has Gilead proven by clear and convincing evidence that Claim 1 of the '712 patent is invalid for lack of enablement?

\_\_\_\_\_ Yes (Verdict for Gilead)    ☒ No (Verdict for Merck and Ionis)

<i>If "YES"</i> to Questions 1 and/or 2, answer Questions 3 and 4 and go to the next claim.	<i>If "NO"</i> to both Questions 1 and 2, skip Questions 3 and 4 and go to the next claim.
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3. Has Gilead proven by clear and convincing evidence that Claim 1 of the '712 Patent is invalid for derivation from Jeremy Clark?

\_\_\_\_\_ Yes (Verdict for Gilead)    \_\_\_\_\_ No (Verdict for Merck and Ionis)

4. Has Gilead proven by clear and convincing evidence that Claim 1 of the '712 Patent is invalid for prior invention by Jeremy Clark?

\_\_\_\_\_ Yes (Verdict for Gilead)    \_\_\_\_\_ No (Verdict for Merck and Ionis)

## B. Claim 2.

1. Has Gilead proven by clear and convincing evidence that Claim 2 of the '712 patent is invalid for lack of written description?

\_\_\_\_\_ Yes (Verdict for Gilead)   X   No (Verdict for Merck and Ionis)

2. Has Gilead proven by clear and convincing evidence that Claim 2 of the '712 patent is invalid for lack of enablement?

\_\_\_\_\_ Yes (Verdict for Gilead)   X   No (Verdict for Merck and Ionis)

<i>If "YES"</i> <i>to Questions 1 and/or 2,</i> <i>answer Questions 3 and 4</i> <i>and go to the next claim.</i>	<i>If "NO"</i> <i>to both Questions 1 and 2,</i> <i>skip Questions 3 and 4</i> <i>and go to the next claim.</i>
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3. Has Gilead proven by clear and convincing evidence that Claim 2 of the '712 Patent is invalid for derivation from Jeremy Clark?

\_\_\_\_\_ Yes (Verdict for Gilead) \_\_\_\_\_ No (Verdict for Merck and Ionis)

4. Has Gilead proven by clear and convincing evidence that Claim 2 of the '712 Patent is invalid for prior invention by Jeremy Clark?

\_\_\_\_\_ Yes (Verdict for Gilead) \_\_\_\_\_ No (Verdict for Merck and Ionis)

C. **Claim 3.**

1. Has Gilead proven by clear and convincing evidence that Claim 3 of the '712 patent is invalid for lack of written description?

\_\_\_\_ Yes (Verdict for Gilead)      X   No (Verdict for Merck and Ionis)

2. Has Gilead proven by clear and convincing evidence that Claim 3 of the '712 patent is invalid for lack of enablement?

\_\_\_\_ Yes (Verdict for Gilead)      X   No (Verdict for Merck and Ionis)

<i><b>If "YES"</b></i> <i><b>to Questions 1 and/or 2,</b></i> <i><b>answer Questions 3 and 4</b></i> <i><b>and go to the next claim.</b></i>	<i><b>If "NO"</b></i> <i><b>to both Questions 1 and 2,</b></i> <i><b>skip Questions 3 and 4</b></i> <i><b>and go to the next claim.</b></i>
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3. Has Gilead proven by clear and convincing evidence that Claim 3 of the '712 Patent is invalid for derivation from Jeremy Clark?

\_\_\_\_ Yes (Verdict for Gilead)    \_\_\_\_ No (Verdict for Merck and Ionis)

4. Has Gilead proven by clear and convincing evidence that Claim 3 of the '712 Patent is invalid for prior invention by Jeremy Clark?

\_\_\_\_ Yes (Verdict for Gilead)    \_\_\_\_ No (Verdict for Merck and Ionis)

D. **Claim 5.**

1. Has Gilead proven by clear and convincing evidence that Claim 5 of the '712 patent is invalid for lack of written description?

\_\_\_\_ Yes (Verdict for Gilead)      X   No (Verdict for Merck and Ionis)

2. Has Gilead proven by clear and convincing evidence that Claim 5 of the '712 patent is invalid for lack of enablement?

\_\_\_\_ Yes (Verdict for Gilead)      X   No (Verdict for Merck and Ionis)

<b><i>If "YES"</i></b> <b><i>to Questions 1 and/or 2,</i></b> <b><i>answer Questions 3 and 4</i></b> <b><i>and go to the next claim.</i></b>	<b><i>If "NO"</i></b> <b><i>to both Questions 1 and 2,</i></b> <b><i>skip Questions 3 and 4</i></b> <b><i>and go to the next claim.</i></b>
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3. Has Gilead proven by clear and convincing evidence that Claim 5 of the '712 Patent is invalid for derivation from Jeremy Clark?

\_\_\_\_ Yes (Verdict for Gilead)    \_\_\_\_ No (Verdict for Merck and Ionis)

4. Has Gilead proven by clear and convincing evidence that Claim 5 of the '712 Patent is invalid for prior invention by Jeremy Clark?

\_\_\_\_ Yes (Verdict for Gilead)    \_\_\_\_ No (Verdict for Merck and Ionis)

E. **Claim 7.**

1. Has Gilead proven by clear and convincing evidence that Claim 7 of the '712 patent is invalid for lack of written description?

\_\_\_\_ Yes (Verdict for Gilead)    X No (Verdict for Merck and Ionis)

2. Has Gilead proven by clear and convincing evidence that Claim 7 of the '712 patent is invalid for lack of enablement?

\_\_\_\_ Yes (Verdict for Gilead)    X No (Verdict for Merck and Ionis)

<i><b>If "YES"</b></i> <i><b>to Questions 1 and/or 2,</b></i> <i><b>answer Questions 3 and 4</b></i> <i><b>and go to the next claim.</b></i>	<i><b>If "NO"</b></i> <i><b>to both Questions 1 and 2,</b></i> <i><b>skip Questions 3 and 4</b></i> <i><b>and go to the next claim.</b></i>
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3. Has Gilead proven by clear and convincing evidence that Claim 7 of the '712 Patent is invalid for derivation from Jeremy Clark?

\_\_\_\_ Yes (Verdict for Gilead)    \_\_\_\_ No (Verdict for Merck and Ionis)

4. Has Gilead proven by clear and convincing evidence that Claim 7 of the '712 Patent is invalid for prior invention by Jeremy Clark?

\_\_\_\_ Yes (Verdict for Gilead)    \_\_\_\_ No (Verdict for Merck and Ionis)



F. **Claim 9.**

1. Has Gilead proven by clear and convincing evidence that Claim 9 of the '712 patent is invalid for lack of written description?

\_\_\_\_\_ Yes (Verdict for Gilead)      X   No (Verdict for Merck and Ionis)

2. Has Gilead proven by clear and convincing evidence that Claim 9 of the '712 patent is invalid for lack of enablement?

\_\_\_\_\_ Yes (Verdict for Gilead)      X   No (Verdict for Merck and Ionis)

<p><i><b>If "YES"</b></i>  <i><b>to Questions 1 and/or 2,</b></i>  <i><b>answer Questions 3 and 4</b></i>  <i><b>and go to the next claim.</b></i></p>	<p><i><b>If "NO"</b></i>  <i><b>to both Questions 1 and 2,</b></i>  <i><b>skip Questions 3 and 4</b></i>  <i><b>and go to the next claim.</b></i></p>
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3. Has Gilead proven by clear and convincing evidence that Claim 9 of the '712 Patent is invalid for derivation from Jeremy Clark?

\_\_\_\_\_ Yes (Verdict for Gilead)    \_\_\_\_\_ No (Verdict for Merck and Ionis)

4. Has Gilead proven by clear and convincing evidence that Claim 9 of the '712 Patent is invalid for prior invention by Jeremy Clark?

\_\_\_\_\_ Yes (Verdict for Gilead)    \_\_\_\_\_ No (Verdict for Merck and Ionis)

G. **Claim 10.**

1. Has Gilead proven by clear and convincing evidence that Claim 10 of the '712 patent is invalid for lack of written description?

\_\_\_\_ Yes (Verdict for Gilead)      P   No (Verdict for Merck and Ionis)

2. Has Gilead proven by clear and convincing evidence that Claim 10 of the '712 patent is invalid for lack of enablement?

\_\_\_\_ Yes (Verdict for Gilead)      P   No (Verdict for Merck and Ionis)

<p><i><b>If "YES"</b></i>  <i><b>to Questions 1 and/or 2,</b></i>  <i><b>answer Questions 3 and 4</b></i>  <i><b>and go to the next claim.</b></i></p>	<p><i><b>If "NO"</b></i>  <i><b>to both Questions 1 and 2,</b></i>  <i><b>skip Questions 3 and 4</b></i>  <i><b>and go to the next claim.</b></i></p>
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3. Has Gilead proven by clear and convincing evidence that Claim 10 of the '712 Patent is invalid for derivation from Jeremy Clark?

\_\_\_\_ Yes (Verdict for Gilead)    \_\_\_\_ No (Verdict for Merck and Ionis)

4. Has Gilead proven by clear and convincing evidence that Claim 10 of the '712 Patent is invalid for prior invention by Jeremy Clark?

\_\_\_\_ Yes (Verdict for Gilead)    \_\_\_\_ No (Verdict for Merck and Ionis)

H. **Claim 11.**

1. Has Gilead proven by clear and convincing evidence that Claim 11 of the '712 patent is invalid for lack of written description?

\_\_\_\_ Yes (Verdict for Gilead)        X   No (Verdict for Merck and Ionis)

2. Has Gilead proven by clear and convincing evidence that Claim 11 of the '712 patent is invalid for lack of enablement?

\_\_\_\_ Yes (Verdict for Gilead)        X   No (Verdict for Merck and Ionis)

<p><i><b>If "YES"</b></i>  <i><b>to Questions 1 and/or 2,</b></i>  <i><b>answer Questions 3 and 4</b></i>  <i><b>and go to the next claim.</b></i></p>	<p><i><b>If "NO"</b></i>  <i><b>to both Questions 1 and 2,</b></i>  <i><b>skip Questions 3 and 4</b></i>  <i><b>and go to the next claim.</b></i></p>
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3. Has Gilead proven by clear and convincing evidence that Claim 11 of the '712 Patent is invalid for derivation from Jeremy Clark?

\_\_\_\_ Yes (Verdict for Gilead)      \_\_\_\_ No (Verdict for Merck and Ionis)

4. Has Gilead proven by clear and convincing evidence that Claim 11 of the '712 Patent is invalid for prior invention by Jeremy Clark?

\_\_\_\_ Yes (Verdict for Gilead)      \_\_\_\_ No (Verdict for Merck and Ionis)

You have now reached the end of the verdict form and should review it to ensure it accurately reflects your unanimous determinations. The Presiding Juror should then sign and date the verdict form in the spaces below and notify the Security Guard that you have reached a verdict. The Presiding Juror should retain possession of the verdict form and bring it when the jury is brought back into the courtroom.

Dated: March 22, 2016

  
 Presiding Juror